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April 2, 2013

Dear Senator Coleman and Representative Fox:

As a member of the Connecticut Bar since 1966 I write in support of Raised Bill No. 1155, *An Act Concerning Revisions to Statutes Relating to Dissolution of Marriage, Legal Separation and Annulment*

Preliminarily, I will be out of the state and unable to attend and be heard at the Public Hearing scheduled for April 5, 2013. I would sincerely request that this letter be considered in lieu of my appearance.

I think it worthwhile to explain where I'm coming from. For my entire career of 46 years as a member of the Connecticut Bar, I've specialized in Family Relations matters. I've written extensively in the field of Matrimonial Law, and, for many years, was co-author of an annual Survey of Family Law in the Connecticut Bar Journal. I've been President of the American Academy of Matrimonial Lawyers; President of the Connecticut Chapter of the American Academy of Matrimonial Lawyers; Chair of the Family Law Section of the Connecticut Bar Association; an Adjunct Professor of Family Law at the University of Connecticut Law School. As a practicing lawyer I've participated in hundreds of difficult Family Relations cases, including too many that were not capable of being resolved by agreement and were caused to be litigated in a Connecticut Courtroom. I have been on the Faculty of the National Institute of Trial Advocacy for a number of years. In recent years I have been doing a number of complex Mediations and Arbitrations in Connecticut. I had a prominent part in the drafting of Public Act 73-373, then referred to as our "New No Fault Dissolution of Marriage Law, when enacted in 1973

It is very much in the interest of the Connecticut public for this Bill to be enacted.

1. **(1) Child Support and child related expenses should be arbitrable in**

Connecticut. This proposed revision would permit what has heretofore not been permitted.

2. **Compared to many states, Connecticut has a first rate Family Court system and many qualified, hard working, diligent and sensitive Judges. Unfortunately, and for reasons that include economic ones, there are not enough such Judges to handle the volume of Family relations matters. The trial of a contested matter usually will take more than a day; sometimes many days. Because there are not enough Judges, the presiding Judge may not be able to hear the case continuously and may have to have a number of continuances, breaking up the continuity of the trial, causing disruption, delays, enormous costs of trial by reason of counsel having to prepare and re-prepare on any number of occasions that might stretch a 4 day trial over a course of many months; inconvenience of the parties and witnesses. Because many cases are interrupted for miscellaneous emergency or routine matters to which the Judge must attend, some trials become more like never- ending, disjointed sagas. Allowing parties, BY AGREEMENT, to litigate their matter with an Arbitrator of their selection allows them to have an uninterrupted hearing, a hearing in a venue convenient to them and their witnesses. It permits them to select the formality or informality that shall apply to the hearing, a stressful situation at best. It saves enormous expense to the litigant by avoiding the need to have their counsel prepare and re-prepare on any number of occasions required because of the disjointed and postponed hearings. Most importantly, it permits the litigants to hire an Arbitrator who they believe has the expertise to determine their fate in a matter that is usually the largest personal business transaction of their entire lives. The cost of the Arbitrator is more than offset by the savings in attorney's costs. In 2005, the Connecticut Legislature enacted a significant Arbitration Bill which put to rest any doubt that Family Law matters could be arbitrated. It should be noted that in Connecticut case law, and that of most states that have addressed it, as a matter of public policy, arbitration in family matters is strongly favored. Unfortunately, the 2005 law exempted arbitration of child related expenses/child support. As a result, many Connecticut dissolution cases can not be arbitrated because children are involved. It is often times impossible to separate the issues of Alimony (spousal support) and Child Support. Contrary to the majority of states that permit arbitration of child support issues, Connecticut, heretofore, has not. The proposed bill at Section 3, amends CGS Section 46b-66 (c)and would permit the arbitration of child support. It should be noted that this amendment would have the Arbitrator required, as is a Superior Court Judge, to be obedient to Connecticut Child Support Guidelines. Any deviations from the same would be subject to the same requirements as 46b-84, and 46b-215-46b-225 inclusive.**

1. **(2) The adoption of this Act doesn't cost the State of Connecticut anything. In fact, its adoption will likely result in enormous savings because it will cut down on the need for the volume of Judges needed to deal with the myriad of Family matters now and to be in the system in the future that relate to child support related issues. By reasons of the limitations on the availability of appellate rights in arbitrated matters, there will be fewer appeals, another procedure that consumes the time and efforts of our judiciary, not only in the trial but on the appellate levels.**

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I am also in favor of the balance of Raised Bill 1155. Many of the amendments are necessary in light of the passage of time since the original Dissolution of Marriage Act was enacted 40 years ago in 1973.

(3) With respect to the proposed amendment to provide for a new (b) at Section 4 to 46b-81, the same is necessary to protect a party when there was no personal jurisdiction of their spouse when the initial process was served. This amendment permits equitable distribution when and as there shall be personal jurisdiction of the spouse or former spouse, provided that the court expressly retains jurisdiction to do so at the time of the entry of the initial decree.
Additionally, a new (d) to 46b-81 is proposed wherein the Superior Court Judge is required to take into account the tax consequences of its orders and the tax attributes of the assets of the parties. At this time our case law permits the court, but doesn't require it to, take tax consequences into account. It should be noted that this amendment doesn't require the court to do anything but take these factors into account. In this day and age, contrary to 1973, tax consequences are sophisticated and crucial to be heard and taken into account. To leave one party with an entire tax burden and the other with none, would be quite inequitable. The Superior court Judge should at least be required to take these tax considerations into account before making an order of equitable distribution.
With respect to Section 5, this legislation causes a court not to go through an entirely new trial on the issue of alimony under 46b-82 when a legal separation is converted to a dissolution of marriage. It also requires that a Superior Court Judge take into consideration income tax consequences before making an alimony order.

(4) The new proposed 46b-82 (c) referred to at Section 5 will surely generate substantial discussion. Although I initially opposed the concept of any form of alimony guidelines, upon reflection, I support the requested amendment. Currently, there is little to no predictability as to what a Superior Court Judge will do in fashioning an alimony order. New Judges with no experience, older Judges with limited or extensive experience, Judges in Stamford vs Judges in New London, will differ significantly in orders with respect to alimony. This is not satisfactory. Such a lack of predictability will result in unrealistic litigant expectations and unnecessary litigation. That litigation is costly to the litigants and the State of Connecticut which will require more Judicial person power to deal with this litigation. This amendment does not REQUIRE a Judge to employ any suggested calculations. It provides that a Judge "MAY UTILIZE" the calculations. It clearly provides that they are not mandatory, nor presumptive. It provides that gross income is to be taken into account and defines what gross income is. Presently, our case law requires that alimony not be "based" on gross income, although it can be a "function of" gross income; a distinction without a difference. Net income, by the way, is a myth that can only be unravelled by employing a myriad of assumptions as to what is to be deducted from gross income, taxes and otherwise.
The new proposed (d) at 46b-82 requires a Judge to state in her/his decision whether it

utilized the suggested calculations and, if not, why not. Nothing more and nothing less.

As stated above, I am out of the state and will be unable to speak in favor of Raised Bill No. 1155. I respectfully urge the passage of this legislation. I would be happy to expand on my comments, in person or otherwise, if requested and possible.

Respectfully,

ARTHUR BALBIRER